

LEGAL GUIDANCE

HONORARIA BAN

On February 22, 1995, the U.S. Supreme Court held unconstitutional the honoraria ban at Section 501(b) of the Ethics in Government Act of 1978 as it applies to Federal Executive Branch employees below the grade of GS-16.

As enacted, this statute prohibited a Member of Congress, federal officer, or other Government employee from accepting an honorarium for making an appearance or speech, or writing an article. Individual members, and a union representing, a class composed of all Executive Branch employees below grade GS-16 initiated suit, alleging that the statute was an unconstitutional abridgment of their freedom of speech.

The ban covered speaking and articles on all possible topics including such matters as religion, history, dance, and the environment, even if they were unrelated to the employee's official duties.

The Court held that Section 501(b) does violate the First Amendment.

Using the balancing test set forth in *Pickering v. Board of Ed. of Township High School District*, 391 U.S. 563, 568, the Court sought to "arrive at a balance between the interest of the (employee), as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

Although Section 501(b) did not prohibit any speech nor discriminate among speakers, and only prohibited receiving compensation for speeches and articles, the Court found that it was a significant burden on federal employee's

expression. This curtailment imposes a significant burden on the public's right to read and hear what Government employees would otherwise have written and said.

Should you desire further information, consult with your organizations designated ethics counselor.

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